

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6973 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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RASULBHAI HUSENBHAI SIPAI

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR. NIGAM SHUKLA, ASSTT. GOVERNMENT PLEADER

for Respondents No. 1, 2, 3

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 15/10/96

ORAL JUDGEMENT

This Special Civil Application is directed against the order dated 11th April, 1996, passed against the petitioner by the Police Commissioner, Ahmedabad City, detaining him under the provisions of the Gujarat Prevention of Anti Social Activities Act,

1985. The detention order was executed on the same day, i.e. on 11th April, 1996 and since then the petitioner is under detention lodged in the Rajkot District Jail, Rajkot.

2. The present Special Civil Application was filed in this Court on 11th September, 1996 and on 12th September, 1996, Rule returnable for 10th October, 1996 was issued. So far no reply has been filed on behalf of the respondents nor any affidavit in reply has been filed by the detaining authority.

3. The grounds of detention enclosed with the detention order show that two criminal cases under the Prohibition Act with regard to the possession and sale of country liquor were registered against the petitioner. One matter was pending in the Court and the other matter was pending for investigation, at the time when the detention order was passed. After noticing the allegations of those criminal cases, the detaining authority has noticed that the petitioner was engaged in the business of unauthorised sale of country liquor, which was injurious to health. Reference has also been made to the unfortunate incident of Lattakand, which happened in the past, with which the petitioner is not concerned. The detaining authority has noted that the petitioner is a known bootlegger and was engaged in anti-social activities. Reference has also been made to the incident dated 9th March, 1996 and 5th March, 1996, regarding the petitioner's activities of beating the witnesses and creating the terror for the purpose of storing the unauthorised liquor in the house of the witnesses. These two incidents are supported by statements of other witnesses who have requested that their identity be kept secret as they were afraid of the petitioner. The detaining authority has, therefore, invoked the provisions of Section 9(2) of the Gujarat Prevention of Anti Social Activities Act, 1985, so as to withhold the names and addresses of the witnesses. The detaining authority has noticed that, although the cases were pending against the petitioner under the Prohibition Act, he was still continuing the activities of unauthorised sale of country liquor and has noticed that the proceedings of externment, even if taken against the petitioner, may take a long time and may not serve the purpose to prevent the petitioner from repeating his anti social activities. On these grounds, the detention order was passed by the detaining authority.

4. The detention order has been challenged on more than one grounds, but the learned counsel for the petitioner has laid stress on the submission that, even if the allegations levelled against the petitioner are taken to be true, they do not constitute a case of breach of public order and at the most, it can be said be a case of breach of law and order. Recently, in a decision rendered by this Court on 4th October, 1996 in Special Civil Application No.3879 of 1996 a considered view has been taken after noticing several decisions of the Supreme Court and this Court that, such allegations and materials do not constitute a case of breach of public order so as to justify the passing of a detention order under the PASA Act. At the most, it can be said to be a case of breach of law and order, on the basis of which the detention order cannot be passed. It has been held and a considered view has been taken that cases of breach of law and order will stand on an entirely different footing than that of breach of public order and in the eye of law, grounds of breach of law and order are not at all germane to consider the passing of detention order under the PASA Act. The decision dated 4th October, 1996, referred to hereinabove fully covers the present case, so as to hold the detention to be illegal.

5. Accordingly, this Special Civil Application is allowed. The impugned detention order dated 11th April, 1996, passed by the Police Commissioner, Ahmedabad City, against the petitioner is hereby quashed and set aside and the petitioner's continued detention is declared to be illegal. Respondents are directed to release the petitioner and set him at liberty forthwith, if not required in any other case. Rule 11s made absolute.

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